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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/768,717	01/30/2004	Erik J. van der Burg	3803	5133
21834 7590 07/23/2008 BECK AND TYSSER P.L.L.C. 2900 THOMAS AVENUE SOUTH SUITE 100 MINNEAPOLIS, MN 55416				
EXAMINER				
BACHMAN, LINDSEY MICHELLE				
ART UNIT		PAPER NUMBER		
3734				
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07/23/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/768,717

Applicant(s)

VAN DER BURG ET AL.

Examiner

LINDSEY BACHMAN

Art Unit

3734

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 February 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SG/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

This Office Action is in response to Applicant's amendment filed 11 February 2008.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 2, 3, 4, 8, 9 are rejected under 35 U.S.C. 102(e) as being anticipated by Broome et al. (US Patent 6,152,946).

Claim 1, 2, 3, 4, 8, 9: Broome'946 discloses a device that contains an implantable device (282, Figure 21) that is movable between a reduced and enlarged cross section and has an apex (shown best in similar device 230 in Figure 19), a sheath (288), a deployment catheter (300) that extends through the sheath, and a deployment line (32).

Claim 6: Although not explicitly shown in the referenced embodiment (Figure 21) of Broome, the inclined and axial orientations are shown in Figures 1 and 2 or 13 and 14 of Figures 19 and 20.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bates et al. (US Patent 6,179,859) in view of Broome'946.

Claim 1-20: Bates'859 teaches an implantable device (30) having a plurality of supports (31, 32; column 4, lines 20-30) movable between a reduced cross section and an enlarged cross section (Figures 3a-3c) having a barrier (column 4, lines 19-20). Further, Bates'859 teaches device capable of use a trans-septal catheter (21) and a deployment catheter (25), and a deployment line (11). The implantable device is movable between its expanded and reduced cross-sections when not in contact with body tissue (column 4, lines 10-20). Actuation of the deployment line aids in expanding/contracting the implantable device (column 5, lines 10-20)

Bates'859 does not teach that the deployment line is releasably attached to the implantable device.

Broome'946 discloses a device that contains an implantable device (282, Figure 21) that is movable between a reduced and enlarged cross section and has an apex (shown best in similar device 230 in Figure 19), a sheath (288), a deployment catheter (300) that extends through the sheath, and a deployment line (32). The deployment line is releasably attached to the implantable device for short term deployment (column 9, line 11 to column 10, line 43). It would have been obvious to one of ordinary skill in the art to modify the device of Bates'839 with the removable device as taught by Broome'946 in order to facilitate temporary deployment of the device.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Broome'946, as applied to Claim 1 in view of Ostrovsky (US Patent 6,447,530).

Claims 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bates in view of Broome'946, as applied to Claim 11, in further view of Ostrovsky'530.

Broome and Bates in view of Broome'946 discloses the invention as claimed with the exception of the tissue attachment elements. Ostrovsky teaches that tissue attachment barbs on a filter prevent its migration once deployed. It would have been obvious to have provided the filter of Broome with tissue attachment barbs, as taught by Ostrovsky, as these would prevent the undesirable migration of the filter once deployed.

Response to Arguments

Applicant's arguments filed 11 February 2008 have been fully considered but they are not persuasive.

Applicant argues that the filter in Applicant's invention is always retained by the deployment system, however this limitation is not contained in the claim language.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LINDSEY BACHMAN whose telephone number is (571)272-6208. The examiner can normally be reached on Monday to Thursday 7:30 am to 5 pm, and alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on 571-272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3773

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/L. B./
Examiner, Art Unit 3734

/(Jackie) Tan-Uyen T. Ho/
Supervisory Patent Examiner, Art Unit 3773